

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Eloi Kouekassazo,

Plaintiff,

v.

City of Columbus, *et al.*

Defendants.

: Case No. 2:19-cv-1578

**: Judge Sarah D. Morrison
Judge Kimberly A. Jolson**

OPINION AND ORDER

On February 14, 2020, Defendants filed a Motion for Summary Judgment. (ECF No. 41.) After Defendants filed their Motion for Summary Judgment, Mr. Kouekassazo moved for voluntary dismissal of his claims without prejudice. (ECF No. 44.) On March 5, 2020, Mr. Kouekassazo filed a motion to extend his response time due to the pending motion to dismiss. (ECF No. 46.) The Magistrate granted Mr. Kouekassazo an extension to March 20, 2020. (ECF No. 47.) On March 19, 2020, Mr. Kouekassazo moved for a second extension on the grounds that he was having computer difficulties and that he was unable to use the library computers because the public libraries are now closed due to the current public health crisis. (ECF No. 50.) Mr. Kouekassazo also stated that “[o]ther non-mentioned corona virus restrictions are in play . . . and Plaintiff cannot list[] them all in this motion.” (*Id.*) The Magistrate again granted Mr. Kouekassazo an extension, this time to April 3, 2020. (ECF No. 51.) On April 2, 2020, Mr. Kouekassazo filed a third request for an extension on the same grounds as his first two motions, the pending motion to dismiss and various “restrictions” due to the current public health crisis. (ECF No. 52.) He requests an extension to May 3, 2020. (*Id.*)

The Court first addresses Mr. Kouekassazo's motion to dismiss. He asserts three reasons for his motion—1) the Magistrate Judge granted Defendants' motion for leave to file a manual exhibit without allowing him time to respond, 2) he complains that Defendants have listed the wrong judicial officer in the case caption on their filings, and 3) Mr. Kouekassazo has other motions pending before the Court. Defendants oppose this motion on the ground that they are entitled to judgment as a matter of law, a decision that would prejudice Mr. Kouekassazo's ability to reinitiate suit.

The Court construes Mr. Kouekassazo's motion as a motion to dismiss pursuant to Rule 41(a)(2), which allows an action to be dismissed at the plaintiff's request by court order. Fed. R. Civ. P. 41(a)(2). "[T]he purpose of Rule 41(a)(2) is to protect the nonmovant, here the defendants, from unfair treatment." *Bridgeport Music, Inc. v. Universal-MCA Music Pub., Inc.*, 583 F.3d 948, 953 (6th Cir. 2009). "In determining whether such prejudice would result, courts typically consider 'the defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action, insufficient explanation for the need to take a dismissal, and whether a motion for summary judgment has been filed by the defendant.'" *Id.* (quoting *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994)).

None of Mr. Kouekassazo's reasons in support of the motion is relevant to the motion, nor are they adequate explanation for the need for dismissal. The Court also determines that the defendants would suffer great prejudice from a voluntary dismissal due to the fact that Mr. Kouekassazo waited to file his motion until long after Defendants filed their motion for summary judgment—indeed, four days before he was due to respond. The Motion for Voluntary Dismissal is **DENIED**.

Regarding Mr. Kouekassazo's third Motion for Extension, he has now had seven weeks to respond to Defendants' Motion for Summary Judgment. The Court is sympathetic to Mr. Kouekassazo's reliance on the public library; however, this is inadequate reason for his continued delay. The public libraries did not close until March 13, 2020. *See* Columbus Metropolitan Library to close in response to COVID-19 coronavirus, <https://www.columbuslibrary.org/press/columbus-metropolitan-library-close-response-covid-19-coronavirus> (Mar. 13, 2020). That was one month after Defendants' motion was filed and one week after Mr. Kouekassazo's first Motion for Extension was granted. Mr. Kouekassazo's motion is **GRANTED IN PART AND DENIED IN PART**. He is **ORDERED** to file his response to Defendants' Motion for Summary Judgment no later than April 15, 2020. Absolutely no further extensions will be granted. Failure to file a response by April 15, 2020, will be construed as a waiver of the right to respond to Defendants' motion.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE